

N. 2938

No. 14762

United States
Court of Appeals
for the Ninth Circuit.

IN THE MATTER OF THE APPLICATION OF
BEN WASSERMAN FOR ADMISSION TO
THE BAR OF THE UNITED STATES
DISTRICT COURT, SOUTHERN DIS-
TRICT OF CALIFORNIA, BEN WASSER-
MAN,

Appellant.

Transcript of Record

Appeal from the United States District Court
Southern District of California
Central Division

FILED

AUG - 8 1955

No. 14762

United States
Court of Appeals
for the Ninth Circuit.

IN THE MATTER OF THE APPLICATION OF
BEN WASSERMAN FOR ADMISSION TO
THE BAR OF THE UNITED STATES
DISTRICT COURT, SOUTHERN DIS-
TRICT OF CALIFORNIA, BEN WASSER-
MAN,

Appellant.

Transcript of Record

Appeal from the United States District Court
Southern District of California
Central Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Certificate of Clerk	18
Concise Statement of Points on Which Appellant Intends to Rely	20
Motion of Bertram S. Harris to Admit Ben Wasserman as a Member of the Bar.....	3
Affidavit in Support	6
Name and Address of Attorney	1
Notice of Appeal	10
Order Denying Motion	9
Order Proposed by Ben Wasserman (unsigned)	8
Transcript of Proceedings	11

NAME AND ADDRESS OF ATTORNEY

For Appellant:

BERTRAM S. HARRIS,
8221 West 3rd St.,
Los Angeles 48, Calif.

In the United States District Court, Southern
District of California, Central Division

No. 18095-Y

In Re: Application of:

BEN WASSERMAN, for Admission to the BAR
OF THIS COURT.

MOTION OF BERTRAM S. HARRIS TO
ADMIT BEN WASSERMAN AS A MEM-
BER OF THE BAR OF THE ABOVE-EN-
TITLED COURT

Comes Now, Bertram S. Harris, a member of
the Bar of the above-entitled Court, in good stand-
ing, and moves the Court that Ben Wasserman be
admitted as an attorney at law and as a member
of the said bar of the said Court, with all of the
privileges appertaining thereto, and in support
thereof alleges:

I.

That the applicant, Ben Wasserman, is a mem-
ber of the following Bars in good standing: The
State of Arkansas, The United States District
Court for the Eastern District of Arkansas and
the United States Court of Appeals for the Ninth
Circuit.

II.

That the applicant, Ben Wasserman, is possessed
of good moral character; that no proceedings have
ever been instituted against him for disbarment or

suspension, as a member of the Bar, before any Court wherein he is enrolled.

III.

That the United States District Court for the Southern [2*] District of California, is a separate and independent Court, maintaining its own roll of attorneys; it is not subject to the appellate or supervisory jurisdiction of any Court of the State of California, the State Bar of California, or any administrative agency of the State of California.

IV.

That the United States District Court for the Southern District of California, is an inferior Court created by Congress, directly under and subject to the appellate and supervisory jurisdiction of the United States Court of Appeals for the Ninth Circuit; and therefore, all members of the Bar admitted to practice law before the United States Court of Appeals for the Ninth Circuit are automatically members of the Bar of the United States District Court for the Southern District of California and may appear and represent clients as an attorney, advocate, proctor, solicitor, and counselor of said Court, with all of the rights and privileges appertaining thereto.

V.

That a person admitted to practice as an attorney before any District Court of the United States, and is a member of the said Court in good stand-

***Page numbering appearing at foot of page of original Certified Transcript of Record.**

ing, is automatically qualified to practice his profession before the United States District Court for the Southern District of California, and upon motion duly made, the applicant shall be admitted, sign the roll of attorneys and receive a certificate of admission to practice.

VI.

That the several United States District Courts throughout the United States of America, have concurrent jurisdiction to admit attorneys to practice before them, and admission to practice in one jurisdiction is admission to practice in all jurisdictions; that the several Courts have only jurisdiction to supervise said attorneys appearing before them or practicing in said Courts, and [3] to require said attorneys to sign the roll of attorneys.

VII.

Rule 1(b), of the United States District Court for the Southern District of California, requires as a condition for admission to its Bar, that the applicant be an active member in good standing, of the State Bar of California; the said Rule 1(b), therefore, is class legislation, arbitrary and capricious; that if the applicant herein is refused admission to the Bar of this Court on the sole ground that he is not a member in good standing, of the State Bar of California, then the substantial rights of this applicant are affected, in contravention of Article I, Sections 8.9 and 10; Article III, Sections 1 and 2.2; Article IV, Sections 1 and 2.1;

Article VI, Section 2; Amendment V; and Amendment XIV, of the Constitution of the United States of America.

Wherefore, it is prayed that Ben Wasserman, applicant herein, be admitted to the Bar of the United States District Court as an attorney, counselor, solicitor, advocate and proctor, with all of the rights and privileges appertaining thereto.

/s/ BERTRAM S. HARRIS.

[Endorsed]: Filed April 21, 1955.

[Title of District Court and Cause.]

AFFIDAVIT OF BEN WASSERMAN IN SUPPORT OF HIS APPLICATION AND MOTION FOR HIS ADMISSION TO THE BAR OF THE ABOVE-ENTITLED COURT

State of California,
County of Los Angeles—ss.

Ben Wasserman, being first duly sworn, deposes and states: that he is a person possessed of good moral character; that on January 16, 1933, he was duly admitted to practice as an attorney at law in the Supreme Court and all inferior Courts in the State of Arkansas, that no proceedings for suspension or disbarment have ever been instituted against him, and that he is now a member of said Bar in good standing; that on September 13, 1933, he was duly admitted to practice as an attorney in the

United States District Court for the Eastern District of Arkansas, that no proceedings for suspension or disbarment have ever been instituted against him, and that he is now a member of the said Bar in good standing; that on August 4, 1954, he was duly admitted to practice as an attorney and counselor in the United States Court of Appeals for the Ninth Circuit, that no proceedings have ever been instituted against him [5] for suspension or disbarment, and that he is now a member of the said Bar in good standing; that he is a citizen of the United States and a resident of Los Angeles County, California; that he is not now nor was he ever a member of the State Bar of California, or any other Bar except those herein mentioned; that as a citizen of the United States and as a member of the Bar, in good standing, of the jurisdictions herein mentioned, he claims equal rights and privileges as those accorded members of the State Bar of California, that he be afforded the right to practice his profession as an attorney, counselor, solicitor, advocate and proctor before the United States District Court for the Southern District of California, with all of the rights and privileges appertaining thereto.

Wherefore, affiant prays that he be admitted to the Bar of the United States District Court for the Southern District of California, that he be permitted to sign the roll of attorneys and that he have a certificate of his admission issued to him upon payment of the fees required in such cases.

/s/ BEN WASSERMAN.

Subscribed and sworn to before me, this 14th day of April, 1955.

[Seal] /s/ BERTRAM S. HARRIS,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed April 21, 1955. [6]

[Title of District Court and Cause.]

ORDER

On motion duly made, this 18th day of April, 1955, by Bertram S. Harris, a member of the Bar of this Court, in good standing, to admit as an attorney and member of the Bar of this Court, Ben Wasserman, a member in good standing, of the Bars of, the State of Arkansas, United States District Court for the Eastern District of Arkansas, and the United States Court of Appeals for the Ninth Circuit; and

The Court Having Jurisdiction of the subject matter herein and of the parties hereto:

It Is Hereby Ordered, that Ben Wasserman be admitted as an attorney and member of the Bar of the United States District Court for the Southern District of California, with all of the rights and privileges appertaining thereto; that he be permitted to sign the roll of attorneys and upon pay-

ment of the regular fees he have issued to him a certificate of such admission.

Dated at Los Angeles, Calif., April 18, 1955.

.....,
Judge, United States District Court, Southern District of California.

Lodged April 18, 1955. [7]

In the United States District Court, Southern District of California, Central Division

No. 18095-Y

In Re: Application of:

BEN WASSERMAN, for Admission to the Bar of the ABOVE-ENTITLED COURT.

ORDER

On motion duly made, April 18, 1955, by Bertram S. Harris, a member of the Bar of this Court in good standing, to admit as an attorney and member of the Bar of this Court, Ben Wasserman, a member in good standing of the Bars of, the State of Arkansas, United States District Court for the Eastern District of Arkansas, and the United States Court of Appeals for the Ninth Circuit; and

The Court being fully advised in the premises and having jurisdiction of the subject matter herein and of the parties hereto,

Finds

(1) That the applicant for admission, Ben Wasserman, is not a member of the State Bar of California and therefore is not eligible for admission to the Bar of this Court; under the rules of this Court; and

(2) That the said applicant is not otherwise entitled under the Constitution or laws of the United States to become a member of the Bar of this Court;

Therefore, It Is Hereby Ordered, Adjudged, and Decreed, [8] that Ben Wasserman be denied admission to the Bar of this Court; and the motion of Bertram S. Harris, a member of the Bar of this Court in good standing, to admit Ben Wasserman, as a member of the Bar of this Court is also denied.

Dated: April 20, 1955.

/s/ LEON R. YANKWICH,

Judge, United States District Court, Southern District of California.

[Endorsed]: Filed April 21, 1955.

Judgment docketed and entered April 21, 1955. [9]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given, that Ben Wasserman, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the Order made

in the above-entitled matter on April 20, 1955, wherein said Ben Wasserman was denied admission to the Bar of the above-entitled Court, and from the whole of said Order.

Dated: Los Angeles, California, April 22, 1955.

/s/ BERTRAM S. HARRIS,
Attorney for Appellant
Ben Wasserman.

[Endorsed]: Filed April 22, 1955. [10]

In the United States District Court, Southern
District of California, Central Division

In the Matter of the Application of
BEN WASSERMAN, for Admission to the BAR
of this COURT.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Honorable Leon R. Yankwich, Judge Presiding.

Appearances:

For the Applicant:

BERTRAM S. HARRIS, ESQ.

Monday, April 18, 1955, 10:00 A.M.

The Court: Are there any ex parte matters? Admissions to the Bar?

Mr. Harris: Yes, your Honor.

The Clerk: This is Mr. Bertram S. Harris, speaking.

Mr. Harris: At this time, your Honor, I move the admission of Ben Wasserman, a member of the following Bars in good standing: The State of Arkansas, the United District Court for the Eastern District of Arkansas, and the United States Court of Appeals for the Ninth Circuit.

No proceedings have ever been brought against this man for suspension or disbarment, and he is a member in good standing in those courts.

He is not, however, a member of the California State Bar, and I am making this motion on the ground that I believe that Rule 1(b) of the United States District Court for the Southern District of California, which requires as a condition for admission to its Bar, that the applicant be an active member in good standing of the State Bar is unconstitutional; that it represents class legislation, and it is arbitrary and capricious; that if this applicant is refused admission to this Bar on the sole ground that he is not a member in good standing of the State Bar of California, then his substantial rights are affected, in contravention of Article I, Sections 8.9 and [2*] 10; Article III, Sections 1 and 2.2; Article IV, Sections 1 and 2.1; Article VI, Section

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

2; and the Fifth Amendment and the Fourteenth Amendment of the Constitution of the United States of America.

I present Mr. Ben Wasserman.

The Court: You may be seated—both of you.

From time immemorial it has been the recognized principle for the District Courts of the United States to have the right to determine the conditions upon which a person should be admitted to practice. At the Judicial Conference of the judges of the Ninth Circuit two or three years ago there was presented for approval a then pending Act of Congress, which would automatically admit to any District Court of the United States any person who has been admitted to practice in the Supreme Court of the United States. The Conference, consisting of the judges of the Ninth Circuit and such lay delegates as were appointed, declined approval. Among those who participated, of course, were the judges of the Court of Appeals for the Ninth Circuit.

At the prior Conference a discussion was had on the basis of a suggestion that admission be regulated by a rule of civil procedure to be proposed as an amendment to the Federal Rules, which would make admission into one Circuit a ground for admission into another. The judges voted against it.

I may say that this motion has just come in. I had no [3] notice, and I am relying on my memory, which I think is pretty accurate, in pointing out some of the historical facts which lie behind the rule.

There are districts, even in the Ninth Circuit,

which admit anyone to practice who is admitted in any of the States in the Circuit. That is the rule in the State of Washington, and because of the proximity of the two States, Washington and Oregon, where I have sat in one or the other of those States, either at Portland, Seattle or Tacoma, lawyers from Portland and Seattle have appeared in the courts, the only requirement being to be admitted to practice in one or the other of the Districts.

We have made membership in the State Bar here a condition. I may say that at the last Conference I was one of the leaders opposing the rule that once a man is admitted before another District Court, or even before the Supreme Court of the United States, that he be admitted in California. I pointed to the fact that that would create a dual bar membership. We would have members, who are members of the organized State Bar, subject to investigation before they are admitted as to their character, subject in instances to examinations which they must pass to satisfy the Board that they possess the learning and such knowledge of our particular laws which are necessary to any practitioner. That may not seem applicable on first impression to the Federal courts, but when you bear in mind [4] that a large percentage of our work comes from diversity, in which, as the Supreme Court has said, we merely sit as another State court, it becomes very important that the man who practices in the District Court not only be amenable to the discipline of the State Bar, but

that he be conversant with the laws of California, with which he will have to deal as a practitioner. Admission to our Bar does not limit him merely to appearances in patent cases, or copyright cases, or tax cases, which are of a Federal character. He may appear in a diversity case, or in a personal injury case in which one of the defendants is a non-resident. He may appear in a case, for instance, against Sears-Roebuck, which is a foreign corporation, or against the May Company, or many other of our mercantile institutions which are foreign corporations, and which, therefore, are sued in the Federal courts.

So the reason for tying our admissions to the State Bar is as I have stated, so that all the persons who appear before us are in the same category. Otherwise we would have a group which is automatically a part of the State Bar, and a group over which the State Bar would have no control and that would be subject only to such control as we might exercise under our Federal rules. It has never been held that the mere fact a man is admitted to the practice of law in one State permits him to practice law in another State. California, however, is what is known as a comity State, and in the past many were [5] admitted without taking a Bar examination. I myself was in that category. In 1909 I was admitted to the Bar of Oregon, taking the Bar examination there, and shortly thereafter I came to California and was admitted at that time upon a certificate showing that I was a member in good standing of the Oregon Bar.

At the present time there are certain limitations. A person must have practiced a certain number of years—five years, I think it is—and then may be admitted upon being subjected to a limited examination, and that is an examination relating to particular Federal procedural matters.

There is one exception that we make, and that is merely because the law so provides. A person who is an attorney for a governmental agency has the right to appear in our court, even though he not be a member of the local State Bar. For instance, we have had men in the Lands Division and men in the Anti-trust Division who have appeared before our courts, but that is merely because the law so recognizes. Furthermore, they recognize government attorneys to such an extent that even in the rules relating to criminal procedure provision is made that a government attorney may appear before the grand jury, and a government attorney need not necessarily be a member of the Bar of the State.

Those are some of the matters which should be adverted to in ruling on a matter of this [6] character.

The motion to admit Mr. Ben Wasserman as a member of the Bar of this court will be denied.

The Clerk: In order to make an appeal record, should counsel prepare an order?

The Court: Yes, counsel should prepare an order. I think I will have this petition filed under Miscellaneous.

The Clerk: We can lodge that order.

The Court: You can lodge the order, but an order should be made conforming to the rules, showing that the motion is denied upon the ground that the applicant is not a member in good standing of the State Bar and, therefore, is not eligible, and that the Court finds that he is not otherwise entitled under the Constitutional laws of the United States to become a member of this Bar.

Mr. Harris: I will prepare it, your Honor.

The Court: All right. [7]

Certificate

I, Marie G. Zellner, hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 19th day of April, A.D. 1955.

/s/ MARIE G. ZELLNER,
Official Court Reporter.

[Endorsed]: Filed April 21, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 11 inclusive, contain the original

Motion of Bertram S. Harris to Admit Ben Wasserman as a Member of the Bar of the Above-Entitled Court, with Affidavit of Ben Wasserman;

Proposed Form of Order, Lodged April 18, 1955;

Order Denying Motion;

Notice of Appeal;

Appellant's Designation of Record on Appeal;

which together with one volume of Reporter's Transcript of proceedings had on April 18, 1955; in the above-entitled cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit in said cause.

I further certify that my fees for preparing the foregoing record amount to \$1.60, which sum has been paid by appellant.

Witness my hand and the seal of said District Court, this 12th day of May, 1955.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14762. United States Court of Appeals for the Ninth Circuit. In the Matter of the Application of Ben Wasserman for Admission to the Bar of the United States District Court, Southern District of California, Ben Wasserman, Appellant. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed May 14, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14762

In the Matter of

The Application of BEN WASSERMAN, for Admission to the Bar of the United States District Court, for the Southern District of California,

Appellant,

vs.

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF CALI-
FORNIA,

Appellee.

CONCISE STATEMENT OF POINTS ON
WHICH APPELLANT INTENDS TO RELY

Following, is a concise statement of points on which the appellant intends to rely:

I.

That the United States District Court for the Southern District of California, is a separate and independent court maintaining its own roll of attorneys; it is not subject to appellate or supervisory jurisdiction of any court of the State of California, the State Bar of California, or any administrative agency of the State of California; and therefore cannot limit admission to its bar to members of the Bar of the State of California; and cannot enter into any agreement with any branch of gov-

ernment or administration agency to limit admission to the Bar of the United States District Court to only members of the Bar of the State of California.

II.

That the United States District Court for the Southern District of California, is an inferior court created by Congress, directly under, and subject to the appellate and supervisory jurisdiction of the United States Court of Appeals for the Ninth Circuit; and therefore, all members of the bar admitted to practice law before the United States Court of Appeals for the Ninth Circuit, are automatically members of the Bar of the United States District Court for the Southern District of California, and may appear, participate in any and all proceedings and otherwise represent clients as an attorney, advocate, proctor, solicitor and counselor of said court, with all of the rights and privileges appertaining thereto.

III.

Any person admitted to practice as an attorney before any District Court of the United States, and who is a member of the bar of said court in good standing, is automatically qualified to practice his profession, whenever he chooses, before the United States District Court for the Southern District of California; and upon motion duly made, the applicant shall be admitted, sign the roll of attorneys, and receive a certificate of his admission to practice.

IV.

That the several United States District Courts throughout the United States of America, have concurrent jurisdiction to admit attorneys to practice in its courts, and admission to practice in one jurisdiction is admission to practice in all jurisdictions; that the several courts have only jurisdiction to supervise said attorneys appearing before them or practicing in said court, and to further require that said attorney sign the roll of attorneys of the local court wherein he is appearing.

V.

Rule 1(b), of the United States District Court for the Southern District of California, limits admission to its bar, exclusively, only active members of the Bar of the State of California and excludes all others, regardless of whether such attorney is of good moral character and otherwise possesses the qualification of being a member of the bar in good standing, regardless of the jurisdiction wherein he is enrolled. Appellant therefore charges, that he has been put in a class different than members of the Bar of the State of California, and further charges:

(A) That the rules of court of the United States District Court for the Southern District of California amounts to class legislation, preempting its role of attorneys to members of the Bar of the State of California;

(B) That the said rule of court is arbitrary and capricious;

(C) That the said rule of court affects the substantial rights of appellant herein, in that it is in contravention of Article I, Sections 8.9 and 10, of the Constitution of the United States of America;

(D) That the said rule of court, affects the substantial rights of appellant herein, in that it is in contravention of Article III, Sections 1 and 2.2, of the Constitution of the United States of America;

(E) That the said rule of court affects the substantial rights of appellant herein, in that it is in contravention of Article IV, Sections 1 and 2.1, of the Constitution of the United States of America;

(F) That the said rule of court affects the substantial rights of appellant herein, in that it is in contravention of Article VI, Section 2, of the Constitution of the United States of America;

(G) That the said rule of court affects the substantial rights of appellant herein, in that it is in contravention of Amendment V, to the Constitution of the United States of America;

(H) That the said rule of court affects the substantial rights of appellant herein, in that it is in contravention of Amendment XIV, of the Constitution of the United States of America.

VI.

The United States District Court for the Southern District of California favors the United States of America in that it makes it a special litigant permitting its attorneys, regardless of the jurisdic-

tion in which they have been admitted to practice, although they are not members of the California bar, to appear before it and practice law before it, without limit and without restriction, the same privileges being denied to private litigants.

Dated: May 19, 1955.

/s/ BERTRAM S. HARRIS,
Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 25, 1955.